



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2021-0727; FRL-9552-02-R3]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving state implementation plan (SIP) revisions submitted by the District of Columbia (DC), State of Maryland (MD), and Commonwealth of Virginia (VA) (collectively, the States). The revisions consist of the base year inventory for the Washington, DC-MD-VA nonattainment area (the DC Area) for the 2015 ozone national ambient air quality standards (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: This final rule is effective [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2021-0727. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Michael O'Shea, Planning &

Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2064. Dr. O'Shea can also be reached via electronic mail at OShea.Michael@epa.gov.

SUPPLEMENTARY INFORMATION: On October 7, 2020, the Maryland Department of the Environment (MDE) submitted a revision to the Maryland SIP entitled, "SIP - 20-04 2017 Base Year Inventory for the Washington, DC-MD-VA 2015 Ozone NAAQS Nonattainment Area." This revision is referred to as the "MD submittal" in this rule. On November 4, 2020, the District of Columbia Department of Energy and Environment (DOEE), submitted a revision to the DC SIP entitled, "DC 2015 Ozone NAAQS Attainment Plan Base Year Inventory." This revision is referred to as the "DC submittal" in this rule. On December 11, 2020, the Virginia Department of Environmental Quality (VADEQ) submitted a revision to the Virginia SIP entitled, "8-Hour Ozone (2015 Standard) - Washington Attainment Plan 'VA_2017O3BYEI_12112020.'" This revision is referred to as the "VA submittal" in this rule. The individual state SIP revisions, referred to collectively in this rule action as the "DC Area base year inventory SIPs," address the base year inventory requirement for the DC Area for the 2015 ozone NAAQS.

I. Background

On February 24, 2022 (87 FR 10318), EPA published a notice of proposed rulemaking (NPRM) for the States. In the NPRM, EPA proposed approval of the DC Area base year inventory SIPs. The formal SIP revisions were submitted by MD on October 7, 2020, DC on November 4, 2020, and VA on December 11, 2020.

On October 1, 2015, EPA strengthened the 8-hour ozone NAAQS, lowering the level of the NAAQS from 0.075 ppm parts per million (ppm) to 0.070 ppm. 80 FR 65292 (October 26, 2015). Effective August 3, 2018, EPA designated the following jurisdictions in the DC Area as

marginal nonattainment for the 2015 ozone NAAQS: District of Columbia; Calvert, Charles, Frederick, Montgomery, and Prince George's Counties in MD; and Arlington, Fairfax, Loudoun, and Prince William Counties and Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park Cities in VA. 83 FR 25776 (June 4, 2018). CAA section 182(a)(1) requires ozone nonattainment areas classified as marginal or above to submit a comprehensive, accurate, current inventory of actual emissions from all emissions sources in the nonattainment area, known as a "base year inventory." The DC Area base year inventory SIPs address a base year inventory requirement for the DC Area.

II. Summary of SIP Revision and EPA Analysis

A. EPA's Evaluation of the DC Area Base Year Inventory SIPs

EPA's review of the DC Area base year inventory SIPs indicate that they meet the base year inventory requirements for the 2015 ozone NAAQS.

EPA prepared a technical support document (TSD) for each state's submittal in support of this rule. In those TSDs, EPA reviewed the results, procedures, and methodologies for the SIP base year, and found them to be acceptable and developed in accordance with EPA's technical guidance. EPA's TSDs for the individual state SIPs are available online at <http://www.regulations.gov>, Docket ID No. EPA-R03-OAR-2021-0727.

B. Base Year Inventory Requirements

In EPA's December 6, 2018 rule, "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements," known as the "SIP Requirements Rule," EPA set out nonattainment area requirements for the 2015 ozone NAAQS. (83 FR 62998). The SIP Requirements Rule established base year inventory requirements, which were codified at 40 Code of Federal Regulations (CFR) 51.1315. As required by 40 CFR 51.1315(a), each 2015 ozone nonattainment area must submit a base year inventory within 2 years of designation.

Also, 40 CFR 51.1315(a) requires that the inventory year be selected consistent with the

baseline year for the reasonable further progress (RFP) plan as required by 40 CFR 51.1310(b), which states that the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of 40 CFR part 51, Air Emissions Reporting Requirements, 40 CFR 51.1 through 50. The most recent triennial inventory year conducted for the National Emissions Inventory (NEI) pursuant to the Air Emissions Reporting Requirements (AERR) rule is 2017. 73 FR 76539 (December 17, 2008). The States selected 2017 as their baseline emissions inventory year for RFP. This selection comports with EPA's implementation regulations for the 2015 ozone NAAQS because 2017 is the inventory year. 40 CFR 51.1310(b).¹

Further, 40 CFR 51.1315(c) requires emissions values included in the base year inventory to be actual ozone season day emissions as defined by 40 CFR 51.1300(q), which states: Ozone season day emissions means an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity. The States included actual ozone season day emissions, pursuant to 40 CFR 51.1315(c).

C. DC Area Base Year Inventory SIPs

The DC Area base year inventory SIPs, contain an explanation of each State's 2017 base year emissions inventory for stationary, non-point, non-road, and on-road anthropogenic sources, as well as biogenic sources, in the DC Area. The States estimated anthropogenic emissions for volatile organic compound (VOC), nitrogen oxide (NO_x), and carbon monoxide (CO) for a typical ozone season work weekday. The DC Area base year inventory SIPs were developed

¹ On January 29, 2021, the Court of Appeals for the D.C. Circuit issued its decision regarding multiple challenges to EPA's implementation rule for the 2015 ozone NAAQS which included, among other things, upholding this provision allowing states to use an alternative baseline year for RFP. *Sierra Club v. EPA*, No. 15-1465 (D.C. Cir.). The other provisions of EPA's ozone implantation rule at issue in the case are not relevant for this rule.

collaboratively. As such, their 2017 base year emissions inventory (BYEI) are almost identical and, therefore, will be referred to collectively as the “2017 DC Area BYEI” in the remainder of this rule, unless otherwise noted because individual distinctions are necessary.²

The States developed the 2017 DC Area BYEI with the following source categories of anthropogenic emissions sources: point, quasi-point, non-point, non-road model, on-road, and commercial marine vessels, airport, and railroad (MAR) emissions sources, in addition to biogenic total sources. The 2017 DC Area BYEI sets out the methodologies the States used to develop their base year inventory for each source listed. Those methodologies are explained in further depth within appendices A-D of each state’s submission. Data justifying the inventories are also provided within appendices A-D of each state’s submission. Note, however, that Virginia only included appendix items relevant to their own state but uploaded files jointly with DC for the full inventory development. Furthermore, the MD submittal was earliest and, as such, contains data, development, and guidance that precedes the widespread adoption of the 2017 NEI. This timing differential accounts for the differences in the MD submittal as compared to the DC and VA submittals.

EPA’s review of the DC Area base year inventory SIPs indicates that they meet the base year inventory requirements for the 2015 ozone NAAQS. Other specific requirements of MDE’s October 7, 2020 submittal, DOEE’s November 4, 2020 submittal and VADEQ’s December 11, 2020 submittal and the rationale for EPA’s proposed action, including further information on each source category, are explained in the NPRM and will not be restated here. No public comments were received on the NPRM.

III. Final Action

EPA’s review of this material indicates the DC area base year inventory SIPs meet the base year inventory requirement for the 2015 ozone NAAQS for the DC Area. Therefore, EPA

² The 2017 DC Area BYEI submitted by each individual state is found as follows: DC submittal - Appendix BY2017_EI_Document_October_30_2020_FINAL; MD submittal - Appendix 2. Wash Region 2015 NAAQS BY Inventory SIP; and VA submittal - Appendix NVA-INV-SIP-1.

is approving the DC Area base year inventory SIPs, which were submitted on October 7, 2020 (MD), November 4, 2020 (DC), and December 11, 2020 (VA).

IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia’s Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by Federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal

enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by Federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided

that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian

country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This final rule approving the DC Area base year inventory SIPs may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Nitrogen dioxide, Volatile organic compounds.

Dated: April 6, 2022

Diana Esher,
Acting Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

2. In § 52.470, the table in paragraph (e) is amended by adding an entry for “2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard” at the end of the table to read as follows:

§ 52.470 Identification of plan.

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(e)* * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* *	* *	*	
2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air	The District of Columbia portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS (<i>i.e.</i> ,	11/4/2020	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER	Docket 2022-03863

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
Quality Standard	the District of Columbia)		CITATION]	

Subpart V-Maryland

3. In § 52.1070, the table in paragraph (e) is amended by adding an entry for “2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard” at the end of the table to read as follows:

§ 52.1070 Identification of plan.

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(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * *	* * *	* * *	*	
2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard	Maryland portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS.	10/7/2020	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	The Maryland portion consists of Calvert, Charles, Frederick, Montgomery, and Prince George’s counties.

Subpart VV—Virginia

4. In § 52.2420, the table in paragraph (e)(1) is amended by adding an entry for “2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard” at the end of the table to read as follows:

§ 52.2420 Identification of plan.

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(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* * * *	* *	* *	*	
2017 Base Year Emissions Inventories for the Washington, DC-MD-VA Nonattainment Area for the 2015 Ozone National Ambient Air Quality Standard	The Virginia portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS (<i>i.e.</i> , the District of Columbia)	12/11/2020	[insert date of publication in the Federal Register], [insert Federal Register citation]	The Virginia portion consists of Arlington, Fairfax, Loudoun, and Prince William counties and Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park cities.

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[FR Doc. 2022-07816 Filed: 4/12/2022 8:45 am; Publication Date: 4/13/2022]